

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

FILED

AUG 20 2012

PATRICK E. DUFFY CLERK  
BY \_\_\_\_\_  
Deputy Clerk

FRANCIS HORIEL, CROWN	)	CV 08-135-BLG-RFC
CREATIONS CABINETMAKERS, INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER ADOPTING FINDINGS AND RECOMMENDATIONS (DOC. 63)
BURLINGTON NORTHERN AND	)	
SANTA FE RAILWAY COMPANY, a	)	
foreign corporation f/k/a BURLINGTON	)	
NORTHERN, INC., and BURLINGTON	)	
NORTHERN RAILROAD COMPANY,	)	
a Delaware Corporation,	)	
	)	
Defendants.	)	
	)	

United States Magistrate Judge Carolyn Ostby recommends this Court deny Defendant's Motion to Dismiss (doc. 21) because Defendants failed to follow through with their representation that it would be withdrawn. Doc. 63. There being no objection to Judge Ostby's sound recommendation, her Findings and Recommendations are fully adopted by this Court.

Accordingly, **IT IS HEREBY ORDERED** Defendants' Motion to Dismiss (doc. 21) is **DENIED WITHOUT PREJUDICE.**

DATED this 20 day of August, 2012.

Richard F. Cebull  
RICHARD F. CEBULL  
U.S. DISTRICT JUDGE